IN THE HIGH COURT OF BOMBAY AT GOA
****

CIVIL REVISION APPLICATION NO.197/2000

1. Francisca Vaz,
   widow, adult,
   housewife,

2. Natividade Vaz,
   adult, businessman, and

3. Amaral Vaz, adult,
   student, all r/o
   H.No.169, Ilha de Rachol,
   Raia. .... Applicants.

Versus

1. Regina Vaz Monteiro,
   adult, widow, housewife,
   r/o H. No.821, Near
   the Chapel of Ilha de Rachol. .... Respondent.

2. Deleted by Order dated
   14.9.2000.

Shri C. A. Ferreira, with Shri M. Ibrahim, advocates for the applicants.

CORAM: P.V. HARDAS, J.

DATE:8th February, 2002.

ORAL JUDGMENT

This Civil Revision Application has been filed against the Order dated 25th November, 1999, passed by the learned Civil Judge, Senior Division, at Margao, in Civil Miscellaneous Application No.448/99/A in Special Civil Suit No.57/90/A, dismissing the application filed by the applicants, seeking review of the Order dated 4th August, 1999.

2. The applicants are the original plaintiffs. The suit came to be dismissed for default

of the appearance of the plaintiffs. The suit ultimately came to be restored by the learned trial Judge and the restoration of the suit was subject to the payment of costs of Rs.200/-. The suit was then fixed on 4th August, 1999, for evidence of the plaintiffs, on which date an application, Exh.28, came to be filed praying for adjournment on the ground that the plaintiff no.1, who was to depose in the suit, was not keeping good health because of the recent heart attack and the plaintiff no.3 would be deposing in the matter. In order to depose before the Court, the plaintiff no.3 sought an adjournment to seek necessary instructions. This application was tendered by the plaintiff no.3 in the Court and was objected to by the learned counsel appearing for the non-applicants/defendants on the ground that the suit had been restored, subject to the payment if costs if Rs.200/- and the plaintiffs had not deposited the costs. The learned Civil Judge, Senior Division, Margao, by his Order dated 4th August, 1999, dismissed Exh.28 by holding that since the plaintiffs had not paid the costs of Rs.200/-, the suit had not been restored to the file and the suit stood dismissed.

3. Against the said Order the plaintiffs filed Miscellaneous Civil Application No.448/99/A, praying for restoration of the suit and contending therein that no opportunity had been given to the

plaintiffs to deposit the costs, nor was the plaintiff no.3 called upon to do so, by the Court. The non-applicants/defendants objected to the said application, which was filed under Section 114 of the Code of Civil Procedure on various grounds. The learned trial Court considering the various objections raised by the defendants, held that the application was not verified and was not supported by an affidavit either. The learned trial Court felt that since the restoration of the suit was subject to the payment of costs of Rs.200/-, there was no question of giving opportunity, or calling upon the plaintiffs to deposit the costs. The learned trial Judge, therefore, passed the Order dated 25th November, 1999, dismissing the Civil Miscellaneous Application No.448/99/A. The plaintiffs relied heavily on an affidavit which was filed before the learned trial Court on 19th August, 1999, in which the learned counsel for the plaintiffs has stated on oath that in view of the indifferent health of the plaintiff no.1, he had advised her not to depose, but had asked her to make one of her sons depose in the suit. It is further stated in the affidavit that plaintiff no.1 should seek adjournment because it was not possible for the counsel to brief her son at such short notice. The learned advocate for the plaintiffs has further deposed in the affidavit that he had handed over a written application for adjournment and had

informed plaintiff no.1 to make one of her sons file the said application and pay costs of Rs.200/-, if directed by the Court.

4. In response to the notice before admission issued by this Court, the non-applicants/defendants did not put in an appearance. This Court, therefore, admitted this Civil Revision Application and notice was issued to the non-applicants/defendants. In the meanwhile during the pendency of this Civil Revision Application, the non-applicant no.2 expired and therefore his name came to be deleted. The non-applicant no.1 despite being served is neither present in Court, nor has she engaged any advocate when the matter is called out today.

5. It is true that the plaintiffs ought to have deposited the costs of Rs.200/- in the court as the suit was restored subject to the payment of costs of Rs.200/-. The affidavit of the advocate appearing for the plaintiffs clearly reveals that they had asked plaintiff no.3 to seek adjournment and to pay the costs of Rs.200/-, if so directed by the Court. Obviously, the plaintiff no.3 must have been under a impression that he would be called upon to deposit the costs by the Court. It does not appear to me that the plaintiffs had not deposited the costs deliberately, or with any

ulterior motive. The plaintiff no.3 was under an assumption that he would be called upon to deposit the costs. It is difficult to believe that the plaintiffs would not deposit the costs and seek restoration of the suit, particularly since they had been litigating since the year 1990. The non-applicants/defendants though served, are absent when the case is called out.

6. I do not think the circumstances justify the harsh order of the suit being dismissed in default. I am, therefore, inclined to allow this revision application filed by the applicants/ original plaintiffs.

7. In the result, the impugned Orders dated 25th November, 1999 and 4th August, 1999 are hereby quashed and set aside and the suit of the plaintiffs shall stand restored to file on payment of costs of Rs.200/- (rupees two hundred only) to the non-applicants/ original defendants. The Civil Revision Application is thus allowed with costs of Rs.200/-.

P.V. HARDAS, J.